Supreme Court, U.S.
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No. 95-2069

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

STATE OF FLORIDA DEPARTMENT OF REVENUE
and
CONTINENTAL CASUALTY COMPANY,

Petitioners,

v.

GENERAL DEVELOPMENT CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Respondent accepts question 1 as properly stated by petitioners, however question 2 is restated as follows:

> Whether the Eleventh Circuit correctly held that a settlement agreement approved by the bankruptcy court as to the amount of unpaid income taxes, which expressly reserved the legal issue of priority under section 507(a)(8)(A)(iii), constitutes an assessment "by agreement" for purposes of that Code section.

Corporate Listing

General Development Corporation is now known as Atlantic Gulf Communities Corporation, and its subsidiaries are:

AG Agriculture, Inc.
AG Title Corporation
AGC Affordable Housing Corporation
AGC CL Limited Partner, Inc.
AGC Homes, Inc.
AGC Sanctuary Corporation
AG Sanctuary of Orlando, Inc.
Atlantic Gulf Asia Holdings N.V.
Atlantic Gulf Commercial Realty, Inc.
Atlantic Gulf Communities Management Corporation
Atlantic Gulf Communities Service Corporation
Atlantic Gulf Construction West, Inc.
Atlantic Gulf Development, Inc.
Atlantic Gulf Engineering Company
Atlantic Gulf Realty, Inc.
Atlantic Gulf Receivables Corporation
Atlantic Gulf of Tampa, Inc.
Atlantic Gulf Utilities, Inc.
C.C. Village Development Corporation
Community Title Agency, Inc.
Cumberland Cove, Inc.
Environmental Quality Laboratory, Incorporated
Estero Pointe Development Corporation
Five Star Homes, Inc.
Fox Creek Development Corporation
FRC Investments, Inc.
GDV Financial Corporation
General Development Acceptance Corporation
General Development Air Service, Inc.

CORPORATE LISTING
(Continued)

General Development Broker Services Corporation
General Development Commercial Credit Corporation
General Development Headquarters Corporation
General Development Resorts, Inc.
General Development Sales Corporation
General Development Service Corporation
General Development Utilities, Inc.
Hunter Trace Development Corporation
Lakeside Development of Orlando, Inc.
Longwood Utilities, Inc.
Maplewood Development Corporation
Ocean Grove, Inc.
Parkside Mortgage, Inc.
Regency Island Dunes, Inc.
Sabal Trace Development Corporation
Summerchase Development Corporation
Sunset Lakes Development Corporation
Town & Country II, Inc.
Utility Management Service, Inc.
Windsor Palms Corporation

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RESPONDENT'S BRIEF IN OPPOSITION

The respondent, General Development Corporation, respectfully requests that the Court deny the petition for writ of certiorari which seeks review of the Eleventh Circuit's opinion in this case. That opinion is reported at 82 F.3d 428 (11th Cir. 1996).

STATEMENT

Petitioners Florida Department of Revenue and Continental Casualty Company have accurately set forth the relevant facts and course of the proceeding for the most part. General Development Corporation ("GDC") would call two matters to the Court's attention, however.

First, petitioners state that the Department and GDC settled GDC's income tax liability, that the Bankruptcy Court approved the settlement, and that the state court entered a consent judgment in the settled amount. (Petition 4). As pointed out in the decision brought for review, however, the bankruptcy court did not merely approve the settlement sum and lift the Bankruptcy Code's automatic stay to allow the entry of judgment in state court. It expressly reserved the rights of the parties to contest in the bankruptcy proceeding whether the Department's claim was entitled to priority. (Petition App. 14-15). This foundational reservation for approving the settlement bears directly on petitioners' claim that the consent judgment entered in state court constituted an assessment "by agreement" under section 507(a)(7)(A) of the Code.

Second, petitioners misrepresent a rehearing order entered by the Bankruptcy Court, on the key issue in the case, when they state that the court "made it clear that 'finality' was not required for a tax to be deemed 'assessed' under Florida law." (Petition 5-6). The portion of the order quoted by petitioners reflects the procedural posture of the case but makes no substantive determination on the issue of finality under Florida law. That fact was made crystal clear in the very next but not quoted paragraph of the rehearing order, which stated:

"The preceding deletions are not intended to imply that the statements within are untrue." (Petition App. 43).

Reasons Why the Petition Should be Denied

The Bankruptcy Code entitles an income tax claim to priority if the tax is "not assessed before, but assessable, *under applicable law* or by agreement, after, the commencement of the case." 11 U.S.C. § 507(a)(7)(A)(iii) (emphasis added).[1/] The bankruptcy court succinctly posed the issue in this case, based on that provision of the Code, as whether the income tax obligation of GDC was assessed upon issuance of the Department's Notice of Decision in April of 1981 or, as the Department and Continental contend, only upon entry of the consent judgment in the Leon County Circuit Court in September of 1990. If the tax was assessed in April of 1981, the Department's claim is not entitled to priority under section 507(a)(7)(A)(iii). (Petition App. 35).

The Code does not define the term "assess." The date a tax is assessed is a legal question, determined by looking at "applicable" tax law. Under this statutory scheme, the meaning of assessment depends on the particular tax procedures employed in the jurisdiction where the tax controversy arises.

> Recognizing the difficulty of defining "assessment" so as to encompass all possible tax procedures of federal, state, and local

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1/ As noted by the circuit court, following the October 1994 amendments, 11 U.S.C. § 507(a)(7)(A)(iii) was renumbered as 11 U.S.C. § 507(a)(8)(A)(iii). (Petition App. 5, n.2).

> governmental units, Congress employed a common term of tax lexicon and left its peculiar meaning to depend upon the particular tax procedures.

In re Hartman, 110 B.R. 951, 956 (D. Kan. 1990). In this case, the applicable laws are those of Florida, as the Eleventh Circuit, the district court and the bankruptcy court all recognized. (Petition App. 6, 21, 35).

The primary position of petitioners in seeking certiorari review in this case is that bankruptcy law terms require a uniform federal definition, and that state and local laws are utilized only to determine when the incidence of the operative term acquires the legal characteristics assigned those uniform definitions. (Petition 8). Petitioners assert that "labels" given by state and local jurisdictions should not control federal bankruptcy proceedings. (*Id.* at 10).

Based on these assertions, petitioners suggest that the decision of the Eleventh Circuit in this case is in conflict with decisions of other courts that have applied principles of statutory construction, and that federal uniformity would only be served if the term at issue in this case — "assessed," as used in 11 U.S.C. § 507(a)(8)(A)(iii) — were given a definition "such as 'final and collectible.'" (*Id.* at 8).

There is one over-arching flaw in petitioners' position. The principles argued by petitioners were precisely the ones that the Eleventh Circuit applied in this case. The court expressly rejected petitioners' "rather strained" argument as to what principle of federalism was at issue (Petition App. 6), but the court applied the

bankruptcy statute in a manner fully consistent with the gravamen of petitioners' theory and with the decisions of other courts that have addressed the same statutory provisions as they pertain to state income taxes. It is the result that petitioners ask the Court to change; not the decisional standard.

The decision of the Eleventh Circuit flawlessly begins its analysis of the statutory provision at issue with the terminology employed by Congress — namely, that unsecured bankruptcy claims are not given priority status by the Code unless they are assessed "under applicable law" after commencement of the case. (*Id.* at 5). The decision then follows precedent (never mentioned by petitioners here, but the same precedent that guided both the district court and the bankruptcy court) that harmonizes the use of corresponding terminology in the statute to conclude that the term "applicable law" in state income tax cases means state law. (See *id.* at 6, 21, 35-36).

Petitioners make no attempt to assail the logic of that conclusion: that congressional selection of the term "applicable law"

> is plausibly explained by the need for that provision to be adaptable to a variety of federal, state and local taxes on or measured by income or gross receipts.

In re Hartman, 110 B.R. 951, 955 (D. Kan. 1990).[2/]

[2/] It is noteworthy that, in the district court, the Department itself had agreed that Florida law applied. (Petition App. 21).

The Eleventh Circuit did not, as petitioners assert, expressly hold that any state law "label" is controlling. (Petition 10).[3/] Quite the contrary, the court thoughtfully analyzed the incidents and substance of Florida law in an effort to determine "the conditions of assessment" that had been ascribed by the Florida Legislature. (Petition App. 7). In doing so, the court evaluated each relevant provision of Florida law that bore on the conditions of assessment, as well as the Department's own contemporaneous policy pronouncements as to what the term "assessment" meant (*Id.* at 7-13), to conclude that the assessment of income tax in Florida occurred when the action of the taxing agency itself was "final." (*Id.* at 9).[4/]

This rigorous analysis of Florida statutory provisions and departmental interpretation, of course, presents no policy question or decisional conflict that would warrant re-evaluation by the Court. The Court does not sit to re-interpret state law meanings. See *Michigan v. Long*, 463 U.S. 1032 (1983) (state law ground for decision constitutes an independent and adequate basis for resolution of controversy).

[3/] Petitioners offer no citation or reference to the Eleventh Circuit's decision for its assertion that the court held that the state law "label" is controlling.

[4/] The court noted that the entire controversy generated by the Department and Continental hinged on five words of cross reference in the governing statute that the Florida Legislature simply neglected to strike when it conformed *all* of Florida's statutes to a newly-enacted Administrative Procedure Act. (Petition App. 8). The court sagely observed that it was "unfortunate that the failure to strike five words has caused so much confusion in this case." (*Id.* at 9).

Notwithstanding what the Eleventh Circuit expressly articulated through a step-by-step analysis, petitioners argue that "assessment" should be defined by reference to "finality and collectability," the incidence of which, they say, must be found in state law. It is hard to fathom what different they would have had the Eleventh Circuit do. As noted above, finality was precisely the touchstone used by that court. Collectability of any income tax deficiency owed by GDC had never been an issue in the case because it was never in doubt.[5/]

The legal position asserted by petitioners is an unstated, extreme and unprecedented interpretation of congressional intent, quite different from the finality and collectability tests used by all other courts to define assessment, and quite different from the Eleventh Circuit's finding of finality in Florida law. Petitioners seek a construction of the Bankruptcy Code that would ascribe the moment of finality in making an "assessment" not to the eventual determination by a governmental taxing authority of an amount deemed to be owed by a taxpayer, but rather to the final determination *of a court* as to the sum that the taxing body is owed following the exhaustion of all judicial processes created for review of the agency's tax determination.

That is, petitioners would have the Court incorporate the judiciary in the assessment process for purposes of the Code. **Yet petitioners have identified no case that has incorporated into the notion of "assessment" the processes made available under any applicable law for**

[5/] GDC had posted a bond for the full income tax deficiency before filing its state court challenge in 1981. (Petition App. 3). Collectability, therefore, was guaranteed.

the judicial review of a tax liability determination made by an executive branch taxing authority.[6] Nor will there ever be such a case.

Under the guise of asking for federal uniformity in application of the bankruptcy code, petitioners are really asking the Court to hold (contrary to all precedent under the Bankruptcy Act and Code) that taxing authorities within the executive branch of government do not "assess" taxes in cases where taxpayers disagree with the taxing authority and exercise state law rights to seek court review of the authority's decisions. They are asking that the *courts* be held to constitute part and parcel of the assessment process. While petitioners have vacillated throughout this case as to whether an assessment is "interrupted" by judicial review or simply postponed until judicial review is completed, their goal has been to extend the date of "assessment" in this case beyond the end of the labors of the taxing authority (the Department), and all the way to the conclusion of the labors of the Florida judiciary. As noted, this embodiment of the judiciary into the process of tax "assessment" is unprecedented.

The law of Florida is no different from the law of other jurisdictions with respect to who assesses taxes. Nowhere do judges "assess" taxes. They adjudicate the

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[6] The district court decision in this case had held that assessment in Florida occurs at the conclusion of the judicial process, when and if judicial review of the Department's action is invoked. Acknowledging that "assessments" occur in Florida at the end of the labors of the taxing authority when taxpayers do not avail themselves of judicial review, the district court nonetheless provided neither rationale nor legislative support for the notion of a shifting legal definition of "assessment" that is dependent on action taken or withheld by taxpayers.

correctness of executive branch action (i.e., assessments). There is no support, and petitioners offer none, for the notion that Congress ever intended the judiciary to be a part of the assessment process described in section 507(a) of the Bankruptcy Code.

For its part, the Florida Legislature has made clear that assessment is an executive branch task, as the Eleventh Circuit held. Throughout the provisions governing the administration of the tax laws, the Florida Legislature has repeatedly declared that judicial review of any income tax obligation determined by the Department is only possible *after* there has been, in the first instance, an "assessment." (Petition App. 9-10). The assessment process in Florida includes administrative appeals within the executive branch of government, of course (*id.* at 40), but in that regard it is no different than processes for administrative review made available in other states or by the federal government.[7]

This background for petitioners' position before the Court provides the reasons why certiorari should not be granted.

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[7] The United States Tax Courts are given authority to review assessments of tax by the Internal Revenue Service, 26 U.S.C. §§ 6213(a), 6215(a), and a taxpayer can obtain that court's review without paying the contested amount. In contrast, taxpayers cannot avail themselves of judicial review in the district courts without paying the amount in controversy and suing for a refund. 26 U.S.C. §§ 7421, 7422. This disparity has historical roots, for the Tax Court was initially an agency of administrative appeal of tax assessments within the executive branch of government, and not a part of the judiciary.

1. The decision below does not conflict with the decisions of other courts as to the meaning of terms in the bankruptcy laws.

The decisions cited by petitioners as the basis of conflict on the meaning of bankruptcy laws are anything but in conflict. Petitioners first offer *City of New York v. Feiring*, 313 U.S. 283 (1941), a sales tax case that turned on whether uncollected sales taxes owed to the city by the bankrupt were "taxes" under the Bankruptcy Act. (Petition 8). The obvious distinction between that decision under the Act and the Eleventh Circuit's decision under a different provision of the Code is the fact, as recited in the Court's opinion, that

> nothing in the language of [the applicable Act section] or its legislative history suggests that its incidence is to be controlled or varied by the particular characterization by local law * * * .

313 U.S. at 285. The language and the legislative history of the Code section of concern in this case does state, expressly, that the conditions for the term "assess" *are* to be controlled and varied by local law. Notwithstanding the huge difference in the provisions being construed, in *Feiring* the Court did exactly what the Eleventh Circuit did in this case: it turned to local law to ascertain the elements of a tax (*ibid.*) and there found that the city imposed a financial obligation on the bankrupt which had all the hallmarks of a tax.

Petitioners cite as well to *New Neighborhoods, Inc. v. West Virginia Workers' Compensation Fund*, 886 F.2d 714 (4th Cir. 1989), and to *H & H Beverage Distributors*

v. Department of Revenue of Pennsylvania, 850 F.2d 165 (3d Cir. 1988), *cert. denied*, 488 U.S. 994 (1988), for the principle that those courts rejected the use of labels to construe local laws implicated by provisions of the Bankruptcy Code. But there, too, the courts followed exactly the same format as the Eleventh Circuit did in this case: they sought meaning for a Bankruptcy Code term by analyzing the characteristics of state law.[8/]

There is absolutely nothing in the decision of the Eleventh Circuit that derogates the principle of consistent federal effect that petitioners espouse, or that applies mere labels from state law to resolve the meaning of "assess" under Florida law. Accordingly, there is neither decisional conflict nor, as petitioners suggest (Petition 11), any need to "affirm the principle" of federal uniformity irrespective of local labels.

[8/] In *New Neighborhoods* the court determined that workers' compensation "premiums" were excise taxes for purposes of the Code's priority provision, despite the label, because they were pecuniary burdens imposed to defray the costs of governmental undertakings. The court engaged in a close analysis of the manner in which the sovereign imposed those premiums. In *H & H Beverage*, the court determined that an audit and the issuance of "notice of audit assessment" for unpaid sales taxes did not create a lien so as to violate the automatic stay provision of the Code, but rather was permitted (despite its title) by the Code's express authorization for governmental bodies to issue a "notice of tax deficiency."

2. The decision below is not in conflict with the decisions in the Ninth Circuit.

Petitioners contend that the decision below creates conflict with the Ninth Circuit, relying for their argument on *In re King*, 961 F.2d 1423 (9th Cir. 1992). (Petition 11-12). Here, too, petitioners argue the Eleventh Circuit used state labels to define "assess" while the Ninth Circuit did not, and that finality and collectability were guideposts in *King* that the Eleventh Circuit failed to utilize. Petitioners misread the Eleventh Circuit's decision, however, as GDC has pointed out above. The Eleventh Circuit expressly sought the point of finality in Florida law, with no issue as to collectability existing in the case. Petitioners in any event ascribe to *King* a meaning that it does not have.

It is true that the Eleventh Circuit identified as one difference between Florida and California law that California did not name a particular event as the act of assessment, as petitioners suggest. (Petition App. 11). But that observation was only one aspect of the court's more complete analysis of *King* — an analysis fully warranted in light of the heavy reliance placed on that case by petitioners and by the district court. The Eleventh Circuit did much more than petitioners suggest.

The court also differentiated the procedural posture of the two cases,[2/] and it distinguished the statutory delineation of the moment of assessment in California from that in Florida. (*Ibid.*). It then concluded nothing more startling than that *King*

> is not persuasive in interpreting Florida's tax scheme in which assessment precedes state court review.

(*Ibid.*). No court could have crafted a more careful reconciliation of relevant case law for the purpose of applying "applicable law" to determine the moment of finality for an assessment.

The *King* decision was recently followed by a panel of the Ninth Circuit containing one of the same circuit court judges. In *In re Bracey*, 77 F.3d 294 (9th Cir. 1996), the court applied a finality test to the term "assessed" under section 507(a)(7)(A)(iii) of the Code based on the construction of California's franchise tax law adopted in the *King* decision. The court then went on to the case-determinative issue of when Mr. Bracey's tax protest was "filed" within the meaning of the California revenue statute. The court noted that the California revenue code does not define the term "filed," observed that the term is given a definition in a different California

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[2/] That distinction — that in *King* the taxpayer had never appealed the assessment calculation — is immensely significant. Petitioners and the district court adopted the position that assessment means one thing for taxpayers who do not exercise the right of appeal (in which situation they say Florida deems an assessment to occur when the taxing authority concludes its labor) and those who do (in which situation the term extends through the labors of the judicial branch of government).

statute that delegated the determination of filing date for mailed documents to respective state agencies, and applied the definition of "filing" adopted by the relevant taxing agency.

The Eleventh Circuit's decision is in complete harmony with *Bracey* — the Ninth Circuit's latest word on how to use state law to ascertain meaning for bankruptcy code terms. The Eleventh Circuit, too, examined the articulations of the Florida taxing agency as to what the operative term means, and like the search for meaning by the court in *Bracey* it used agency policy to provide meaning for the critical definitional term. (Petition App. 13).

The Eleventh Circuit's differentiation of *King*, based on differences between the Florida and California tax schemes, is echoed in *In re Wernimont*, 183 B.R. 181 (Bankr. N.D. Iowa 1994). There the court evaluated the characteristics of state law to determine when an Iowa income tax is assessed for purposes of section 507(a)(7)(A)(ii) and (iii), and concluded that Iowa law is distinguishable from both the tax scheme in California (as analyzed in *King*) and the tax scheme in Florida (as analyzed by the district court in this case). Inevitably, courts will perform their analyses of state law characteristics just as the Eleventh Circuit, the Ninth Circuit and the district judge in *Wernimont* did, in order to ascertain the meaning of the term "assessed" in Code section 507(a)(7) *under "applicable law."* The individualized decisions of the courts as to the meaning of any particular state's law characteristics does not, as petitioners suggest, create conflict among the circuits.

3. The issue in this case has no general significance to federal, state or local taxing authorities.

Petitioners suggest that it was not the policy of the Bankruptcy Code to have taxing agencies lose taxes where the law restrains collection, that the Eleventh Circuit's decision has that effect since the Department was prohibited by Florida law from collecting the tax pending the outcome of GDC's state court challenge proceeding, and that, consequently, the decision below is of great importance to Florida because it threatens to impair the collection of state taxes. (Petition 13-14). This contention by petitioners is utter nonsense!

Petitioners conveniently fail to advise the court that the corporate income tax of GDC, and of every other taxpayer who challenges an assessment through the judiciary of Florida, is either fully collected or absolutely assured of collection by the State (if the assessment is judicially affirmed, of course). As a prerequisite to invoking the jurisdiction of Florida's courts, a taxpayer had the obligation either to pay in full the amount of tax in dispute or to post a bond that guarantees payment.[10/]

GDC had posted and maintained a bond for the privilege of pursuing a state court challenge to the Department's assessment. (Petition App. 33-34). That

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[10/] FLA. STAT. § 214.26 (1979). Each and every other section of Florida law that addresses the administration of the Florida corporate income tax requires that a tax "assessment" *precede*, as a prerequisite to suit, any judicial scrutiny in a circuit court action.

fact was seen as having particular significance to the bankruptcy court:

> Insofar as the Department was concerned, the taxes were due and owing and subject to collection when the Notice of Decision was issued in April of 1981. It is for this reason that in order to contest the legality of those taxes in the circuit court GDC was required to post a surety bond pursuant to § 214.26, Fla. Stat. (1979). *The purpose of this bond is precisely to ensure that taxes assessed by [the Department] are collectible at such time as their legality is upheld by the courts.* * * * The Court views [GDC's] circuit court action as * * * analogous to a federal taxpayer's payment of the tax and suit for refund in the District Court, in that the surety bond * * * represents the 'functional equivalent' of payment.

(Petition App. 38-39). The Eleventh Circuit, as well, viewed Florida's "pay or bond" requirement for suit as assurance that state taxes were not in jeopardy by reason of a taxpayer's exercise of the right to seek judicial review. (*Id.* at 9).

There is no merit whatever in petitioners' suggestion that the decision of the Eleventh Circuit has jeopardized Florida revenues.[11/]

11/ There is even less merit, if that were possible, in the suggestion that the court's decision creates "a perverse incentive" for taxpayers to file "groundless" suits when they expect to go into

(continued...)

4. The Eleventh Circuit correctly held that the tax in this case was not assessed "by agreement".

As a final argument for review by the Court, petitioners suggest that the Eleventh Circuit has done something that no other federal court has ever done — allowed the meaning of terms in a federal statute to be determined by private agreement of the parties. This argument bears the same indicia of mischaracterization as the others made by petitioners. By no stretch of imagination did the Eleventh Circuit approve a delegation to GDC and the Department of a definition for the term "assess."

In the course of the bankruptcy proceeding, and after the Department had filed a proof of claim for unpaid taxes, GDC and the Department agreed upon the amount of the tax that would be owed if GDC were liable for those taxes, and they jointly moved the bankruptcy court for approval of their settlement of that sum. (Petition App. 14-15, 34-35). Approval was given, and the court lifted the automatic stay so that judgment could be entered against GDC in state court and Continental could be pursued by the Department for payment on its bond, in partial or full discharge of GDC's tax obligation. (*Id.* at 14).

It was clearly expressed in the order, however, that the action being taken by the court and the parties did not in any way determine the Department's entitlement to a

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11/(...continued)
bankruptcy, in order to frustrate the tax collector. (Petition 14).

priority for its tax claim in the bankruptcy proceeding. (*Ibid.*). Petitioners' suggestion that the parties' liquidation of the amount of the Department's claim constituted an "assessment," because the sum was given agreed-upon finality and became enforceable, mistakes the private resolution of litigation as it affects third parties with judicial interpretation of statutes.

By rejecting the district court's theory that there was "assessment by agreement," the Eleventh Circuit in no way allowed the parties to define the term assessment for purposes of the Bankruptcy Code. The opinion and reasoning of the Eleventh Circuit on this point are clear and cogent (*Id.* at 13-15), and need no elaboration from GDC. It correctly swept away an unbriefed and unreasoned make-weight argument favoring petitioners which the district court had added to its decision in their favor. (See *id.* at 28-29).[12/]

CONCLUSION

Had the Florida Legislature not failed to delete five words of cross reference from the statute governing the administration of state income taxes when it enacted a massive reviser's bill to conform all of Florida's laws to a newly-enacted Administrative Procedure Act, this case and the positions asserted by petitioners would have never been

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12/ Seemingly, the district court could not understand the difference between a settlement of litigation by private parties for the purpose of liquidating a disputed amount and allowing collection from a collateral source, and the assessment of a tax for the purpose of ascribing a date in a bankruptcy proceeding to the finality of action taken under state law by taxing authorities. (Petition App. 29, n.7).

possible. Florida law was crystal clear before the hiatus created by that five-word lapse, and it was later restored to crystal clarity (*id.* at 7-9) that "assessment" under Florida law is the action taken by the Florida Department of Revenue *preceding* invocation of the judicial review process.

The Eleventh Circuit appropriately noted that the drafting omission generated unfortunate consequences. (*Id.* at 8-9). Appropriately, the court discharged its judicial responsibility by carefully addressing the confusion that petitioners sought to create from that legislative gaffe, with careful attention not only to the intricacies of state law doctrines, but as well to the application of appropriate federal principles. The court's decision is neither in conflict with other circuit courts, nor out of harmony with judicial decisions that ascribe meaning to the bankruptcy laws. Certiorari should be denied.

Respectfully submitted,

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